

AMENDED IN SENATE FEBRUARY 14, 2013

SENATE BILL

No. 59

Introduced by Senator Evans

(Principal coauthors: Senators Hill and Steinberg)

(Coauthors: Senators Beall, Block, Cannella, Corbett, De León, DeSaulnier, Fuller, Galgiani, Hancock, Jackson, Lara, Leno, Liu, Pavley, Steinberg, and Wolk)

(Coauthors: Assembly Members Brown, Garcia, Maienschein, and Quirk-Silva)

January 7, 2013

An act to amend ~~Section~~ *Sections 261, 286, 288a, and 289 of, and to add Section 261.1 to, the Penal Code, relating to crimes, and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

SB 59, as amended, Evans. Crimes: ~~rape~~. *sex crimes*.

Existing law provides various circumstances that constitute rape, including an act of sexual intercourse accomplished with an individual who is not the spouse of the perpetrator where the individual submits under the belief that the individual committing the act is the victim's spouse, and this belief is induced by artifice, pretense, or concealment practiced by the accused, with the intent to induce the belief. *Existing law provides various circumstances that constitute sodomy against an individual's will, oral copulation against an individual's will, and sexual penetration against an individual's will, including an act accomplished with an individual who is not the spouse of the perpetrator where the individual submits under the belief that the individual committing the act is the victim's spouse, and this belief is induced by artifice, pretense,*

or concealment practiced by the accused, with the intent to induce the belief.

This bill would instead provide that ~~this type~~ *these types* of rape ~~occurs~~, sodomy, oral copulation, and sexual penetration occur where the individual submits under the belief that the individual committing the act is the victim's ~~sexually intimate partner~~ *sexual partner*. *This bill would define sexual partner to include any individual with who the victim has had consensual sexual contact, as defined.*

By expanding the definition of a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 261 of the Penal Code is amended to
2 read:

3 261. (a) Rape is an act of sexual intercourse accomplished
4 with a person not the spouse of the perpetrator, under any of the
5 following circumstances:

6 (1) Where a person is incapable, because of a mental disorder
7 or developmental or physical disability, of giving legal consent,
8 and this is known or reasonably should be known to the person
9 committing the act. Notwithstanding the existence of a
10 conservatorship pursuant to the provisions of the
11 Lanterman-Petris-Short Act (Part 1 (commencing with Section
12 5000) of Division 5 of the Welfare and Institutions Code), the
13 prosecuting attorney shall prove, as an element of the crime, that
14 a mental disorder or developmental or physical disability rendered
15 the alleged victim incapable of giving consent.

16 (2) Where it is accomplished against a person's will by means
17 of force, violence, duress, menace, or fear of immediate and
18 unlawful bodily injury on the person or another.

1 (3) Where a person is prevented from resisting by any
2 intoxicating or anesthetic substance, or any controlled substance,
3 and this condition was known, or reasonably should have been
4 known by the accused.

5 (4) Where a person is at the time unconscious of the nature of
6 the act, and this is known to the accused. As used in this paragraph,
7 “unconscious of the nature of the act” means incapable of resisting
8 because the victim meets any one of the following conditions:

9 (A) Was unconscious or asleep.

10 (B) Was not aware, knowing, perceiving, or cognizant that the
11 act occurred.

12 (C) Was not aware, knowing, perceiving, or cognizant of the
13 essential characteristics of the act due to the perpetrator’s fraud in
14 fact.

15 (D) Was not aware, knowing, perceiving, or cognizant of the
16 essential characteristics of the act due to the perpetrator’s fraudulent
17 representation that the sexual penetration served a professional
18 purpose when it served no professional purpose.

19 (5) Where a person submits under the belief that the person
20 committing the act is the victim’s ~~sexually intimate~~ *sexual* partner,
21 *as defined in Section 261.1*, and this belief is induced by any
22 artifice, pretense, or concealment practiced by the accused, with
23 intent to induce the belief.

24 (6) Where the act is accomplished against the victim’s will by
25 threatening to retaliate in the future against the victim or any other
26 person, and there is a reasonable possibility that the perpetrator
27 will execute the threat. As used in this paragraph, “threatening to
28 retaliate” means a threat to kidnap or falsely imprison, or to inflict
29 extreme pain, serious bodily injury, or death.

30 (7) Where the act is accomplished against the victim’s will by
31 threatening to use the authority of a public official to incarcerate,
32 arrest, or deport the victim or another, and the victim has a
33 reasonable belief that the perpetrator is a public official. As used
34 in this paragraph, “public official” means a person employed by
35 a governmental agency who has the authority, as part of that
36 position, to incarcerate, arrest, or deport another. The perpetrator
37 does not actually have to be a public official.

38 (b) As used in this section, “duress” means a direct or implied
39 threat of force, violence, danger, or retribution sufficient to coerce
40 a reasonable person of ordinary susceptibilities to perform an act

1 which otherwise would not have been performed, or acquiesce in
2 an act to which one otherwise would not have submitted. The total
3 circumstances, including the age of the victim, and his or her
4 relationship to the defendant, are factors to consider in appraising
5 the existence of duress.

6 (c) As used in this section, “menace” means any threat,
7 declaration, or act which shows an intention to inflict an injury
8 upon another.

9 *SEC. 2. Section 261.1 is added to the Penal Code, to read:*

10 *261.1. “Sexual partner” means an individual with who the*
11 *victim has had consensual sexual contact, including oral*
12 *copulation, sodomy, sexual penetration, or the touching of an*
13 *intimate part of another person as defined in paragraph (1) of*
14 *subdivision (g) of Section 243.4.*

15 *SEC. 3. Section 286 of the Penal Code is amended to read:*

16 286. (a) Sodomy is sexual conduct consisting of contact
17 between the penis of one person and the anus of another person.
18 Any sexual penetration, however slight, is sufficient to complete
19 the crime of sodomy.

20 (b) (1) Except as provided in Section 288, any person who
21 participates in an act of sodomy with another person who is under
22 18 years of age shall be punished by imprisonment in the state
23 prison, or in a county jail for not more than one year.

24 (2) Except as provided in Section 288, any person over the age
25 of 21 years who participates in an act of sodomy with another
26 person who is under 16 years of age shall be guilty of a felony.

27 (c) (1) Any person who participates in an act of sodomy with
28 another person who is under 14 years of age and more than 10
29 years younger than he or she shall be punished by imprisonment
30 in the state prison for three, six, or eight years.

31 (2) (A) Any person who commits an act of sodomy when the
32 act is accomplished against the victim’s will by means of force,
33 violence, duress, menace, or fear of immediate and unlawful bodily
34 injury on the victim or another person shall be punished by
35 imprisonment in the state prison for three, six, or eight years.

36 (B) Any person who commits an act of sodomy with another
37 person who is under 14 years of age when the act is accomplished
38 against the victim’s will by means of force, violence, duress,
39 menace, or fear of immediate and unlawful bodily injury on the

1 victim or another person shall be punished by imprisonment in the
2 state prison for 9, 11, or 13 years.

3 (C) Any person who commits an act of sodomy with another
4 person who is a minor 14 years of age or older when the act is
5 accomplished against the victim's will by means of force, violence,
6 duress, menace, or fear of immediate and unlawful bodily injury
7 on the victim or another person shall be punished by imprisonment
8 in the state prison for 7, 9, or 11 years.

9 (D) This paragraph does not preclude prosecution under Section
10 269, Section 288.7, or any other provision of law.

11 (3) Any person who commits an act of sodomy where the act
12 is accomplished against the victim's will by threatening to retaliate
13 in the future against the victim or any other person, and there is a
14 reasonable possibility that the perpetrator will execute the threat,
15 shall be punished by imprisonment in the state prison for three,
16 six, or eight years.

17 (d) (1) Any person who, while voluntarily acting in concert
18 with another person, either personally or aiding and abetting that
19 other person, commits an act of sodomy when the act is
20 accomplished against the victim's will by means of force or fear
21 of immediate and unlawful bodily injury on the victim or another
22 person or where the act is accomplished against the victim's will
23 by threatening to retaliate in the future against the victim or any
24 other person, and there is a reasonable possibility that the
25 perpetrator will execute the threat, shall be punished by
26 imprisonment in the state prison for five, seven, or nine years.

27 (2) Any person who, while voluntarily acting in concert with
28 another person, either personally or aiding and abetting that other
29 person, commits an act of sodomy upon a victim who is under 14
30 years of age, when the act is accomplished against the victim's
31 will by means of force or fear of immediate and unlawful bodily
32 injury on the victim or another person, shall be punished by
33 imprisonment in the state prison for 10, 12, or 14 years.

34 (3) Any person who, while voluntarily acting in concert with
35 another person, either personally or aiding and abetting that other
36 person, commits an act of sodomy upon a victim who is a minor
37 14 years of age or older, when the act is accomplished against the
38 victim's will by means of force or fear of immediate and unlawful
39 bodily injury on the victim or another person, shall be punished
40 by imprisonment in the state prison for 7, 9, or 11 years.

(4) This subdivision does not preclude prosecution under Section 269, Section 288.7, or any other provision of law.

(e) Any person who participates in an act of sodomy with any person of any age while confined in any state prison, as defined in Section 4504, or in any local detention facility, as defined in Section 6031.4, shall be punished by imprisonment in the state prison, or in a county jail for not more than one year.

(f) Any person who commits an act of sodomy, and the victim is at the time unconscious of the nature of the act and this is known to the person committing the act, shall be punished by imprisonment in the state prison for three, six, or eight years. As used in this subdivision, “unconscious of the nature of the act” means incapable of resisting because the victim meets one of the following conditions:

(1) Was unconscious or asleep.

(2) Was not aware, knowing, perceiving, or cognizant that the act occurred.

(3) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator’s fraud in fact.

(4) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator’s fraudulent representation that the sexual penetration served a professional purpose when it served no professional purpose.

(g) Except as provided in subdivision (h), a person who commits an act of sodomy, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act, shall be punished by imprisonment in the state prison for three, six, or eight years. Notwithstanding the existence of a conservatorship pursuant to the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving consent.

(h) Any person who commits an act of sodomy, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person

committing the act, and both the defendant and the victim are at the time confined in a state hospital for the care and treatment of the mentally disordered or in any other public or private facility for the care and treatment of the mentally disordered approved by a county mental health director, shall be punished by imprisonment in the state prison, or in a county jail for not more than one year. Notwithstanding the existence of a conservatorship pursuant to the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving legal consent.

(i) Any person who commits an act of sodomy, where the victim is prevented from resisting by an intoxicating or anesthetic substance, or any controlled substance, and this condition was known, or reasonably should have been known by the accused, shall be punished by imprisonment in the state prison for three, six, or eight years.

(j) Any person who commits an act of sodomy, where the victim submits under the belief that the person committing the act is the victim's ~~spouse~~ *sexual partner, as defined in Section 261.1*, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce the belief, shall be punished by imprisonment in the state prison for three, six, or eight years.

(k) Any person who commits an act of sodomy, where the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official, shall be punished by imprisonment in the state prison for three, six, or eight years.

As used in this subdivision, "public official" means a person employed by a governmental agency who has the authority, as part of that position, to incarcerate, arrest, or deport another. The perpetrator does not actually have to be a public official.

(l) As used in subdivisions (c) and (d), "threatening to retaliate" means a threat to kidnap or falsely imprison, or inflict extreme pain, serious bodily injury, or death.

(m) In addition to any punishment imposed under this section, the judge may assess a fine not to exceed seventy dollars (\$70)

1 against any person who violates this section, with the proceeds of
2 this fine to be used in accordance with Section 1463.23. The court,
3 however, shall take into consideration the defendant's ability to
4 pay, and no defendant shall be denied probation because of his or
5 her inability to pay the fine permitted under this subdivision.

6 *SEC. 4. Section 288a of the Penal Code is amended to read:*

7 288a. (a) Oral copulation is the act of copulating the mouth
8 of one person with the sexual organ or anus of another person.

9 (b) (1) Except as provided in Section 288, any person who
10 participates in an act of oral copulation with another person who
11 is under 18 years of age shall be punished by imprisonment in the
12 state prison, or in a county jail for a period of not more than one
13 year.

14 (2) Except as provided in Section 288, any person over the age
15 of 21 years who participates in an act of oral copulation with
16 another person who is under 16 years of age is guilty of a felony.

17 (c) (1) Any person who participates in an act of oral copulation
18 with another person who is under 14 years of age and more than
19 10 years younger than he or she shall be punished by imprisonment
20 in the state prison for three, six, or eight years.

21 (2) (A) Any person who commits an act of oral copulation when
22 the act is accomplished against the victim's will by means of force,
23 violence, duress, menace, or fear of immediate and unlawful bodily
24 injury on the victim or another person shall be punished by
25 imprisonment in the state prison for three, six, or eight years.

26 (B) Any person who commits an act of oral copulation upon a
27 person who is under 14 years of age, when the act is accomplished
28 against the victim's will by means of force, violence, duress,
29 menace, or fear of immediate and unlawful bodily injury on the
30 victim or another person, shall be punished by imprisonment in
31 the state prison for 8, 10, or 12 years.

32 (C) Any person who commits an act of oral copulation upon a
33 minor who is 14 years of age or older, when the act is accomplished
34 against the victim's will by means of force, violence, duress,
35 menace, or fear of immediate and unlawful bodily injury on the
36 victim or another person, shall be punished by imprisonment in
37 the state prison for 6, 8, or 10 years.

38 (D) This paragraph does not preclude prosecution under Section
39 269, Section 288.7, or any other provision of law.

1 (3) Any person who commits an act of oral copulation where
2 the act is accomplished against the victim's will by threatening to
3 retaliate in the future against the victim or any other person, and
4 there is a reasonable possibility that the perpetrator will execute
5 the threat, shall be punished by imprisonment in the state prison
6 for three, six, or eight years.

7 (d) (1) Any person who, while voluntarily acting in concert
8 with another person, either personally or by aiding and abetting
9 that other person, commits an act of oral copulation (1) when the
10 act is accomplished against the victim's will by means of force or
11 fear of immediate and unlawful bodily injury on the victim or
12 another person, or (2) where the act is accomplished against the
13 victim's will by threatening to retaliate in the future against the
14 victim or any other person, and there is a reasonable possibility
15 that the perpetrator will execute the threat, or (3) where the victim
16 is at the time incapable, because of a mental disorder or
17 developmental or physical disability, of giving legal consent, and
18 this is known or reasonably should be known to the person
19 committing the act, shall be punished by imprisonment in the state
20 prison for five, seven, or nine years. Notwithstanding the
21 appointment of a conservator with respect to the victim pursuant
22 to the provisions of the Lanterman-Petris-Short Act (Part 1
23 (commencing with Section 5000) of Division 5 of the Welfare and
24 Institutions Code), the prosecuting attorney shall prove, as an
25 element of the crime described under paragraph (3), that a mental
26 disorder or developmental or physical disability rendered the
27 alleged victim incapable of giving legal consent.

28 (2) Any person who, while voluntarily acting in concert with
29 another person, either personally or aiding and abetting that other
30 person, commits an act of oral copulation upon a victim who is
31 under 14 years of age, when the act is accomplished against the
32 victim's will by means of force or fear of immediate and unlawful
33 bodily injury on the victim or another person, shall be punished
34 by imprisonment in the state prison for 10, 12, or 14 years.

35 (3) Any person who, while voluntarily acting in concert with
36 another person, either personally or aiding and abetting that other
37 person, commits an act of oral copulation upon a victim who is a
38 minor 14 years of age or older, when the act is accomplished
39 against the victim's will by means of force or fear of immediate
40 and unlawful bodily injury on the victim or another person, shall

1 be punished by imprisonment in the state prison for 8, 10, or 12
2 years.

3 (4) This paragraph does not preclude prosecution under Section
4 269, Section 288.7, or any other provision of law.

5 (e) Any person who participates in an act of oral copulation
6 while confined in any state prison, as defined in Section 4504 or
7 in any local detention facility as defined in Section 6031.4, shall
8 be punished by imprisonment in the state prison, or in a county
9 jail for a period of not more than one year.

10 (f) Any person who commits an act of oral copulation, and the
11 victim is at the time unconscious of the nature of the act and this
12 is known to the person committing the act, shall be punished by
13 imprisonment in the state prison for a period of three, six, or eight
14 years. As used in this subdivision, “unconscious of the nature of
15 the act” means incapable of resisting because the victim meets one
16 of the following conditions:

17 (1) Was unconscious or asleep.

18 (2) Was not aware, knowing, perceiving, or cognizant that the
19 act occurred.

20 (3) Was not aware, knowing, perceiving, or cognizant of the
21 essential characteristics of the act due to the perpetrator’s fraud in
22 fact.

23 (4) Was not aware, knowing, perceiving, or cognizant of the
24 essential characteristics of the act due to the perpetrator’s fraudulent
25 representation that the oral copulation served a professional purpose
26 when it served no professional purpose.

27 (g) Except as provided in subdivision (h), any person who
28 commits an act of oral copulation, and the victim is at the time
29 incapable, because of a mental disorder or developmental or
30 physical disability, of giving legal consent, and this is known or
31 reasonably should be known to the person committing the act,
32 shall be punished by imprisonment in the state prison, for three,
33 six, or eight years. Notwithstanding the existence of a
34 conservatorship pursuant to the provisions of the
35 Lanterman-Petris-Short Act (Part 1 (commencing with Section
36 5000) of Division 5 of the Welfare and Institutions Code), the
37 prosecuting attorney shall prove, as an element of the crime, that
38 a mental disorder or developmental or physical disability rendered
39 the alleged victim incapable of giving consent.

1 (h) Any person who commits an act of oral copulation, and the
2 victim is at the time incapable, because of a mental disorder or
3 developmental or physical disability, of giving legal consent, and
4 this is known or reasonably should be known to the person
5 committing the act, and both the defendant and the victim are at
6 the time confined in a state hospital for the care and treatment of
7 the mentally disordered or in any other public or private facility
8 for the care and treatment of the mentally disordered approved by
9 a county mental health director, shall be punished by imprisonment
10 in the state prison, or in a county jail for a period of not more than
11 one year. Notwithstanding the existence of a conservatorship
12 pursuant to the provisions of the Lanterman-Petris-Short Act (Part
13 1 (commencing with Section 5000) of Division 5 of the Welfare
14 and Institutions Code), the prosecuting attorney shall prove, as an
15 element of the crime, that a mental disorder or developmental or
16 physical disability rendered the alleged victim incapable of giving
17 legal consent.

18 (i) Any person who commits an act of oral copulation, where
19 the victim is prevented from resisting by any intoxicating or
20 anesthetic substance, or any controlled substance, and this condition
21 was known, or reasonably should have been known by the accused,
22 shall be punished by imprisonment in the state prison for a period
23 of three, six, or eight years.

24 (j) Any person who commits an act of oral copulation, where
25 the victim submits under the belief that the person committing the
26 act is the victim's ~~spouse~~ *sexual partner, as defined in Section*
27 *261.1*, and this belief is induced by any artifice, pretense, or
28 concealment practiced by the accused, with intent to induce the
29 belief, shall be punished by imprisonment in the state prison for a
30 period of three, six, or eight years.

31 (k) Any person who commits an act of oral copulation, where
32 the act is accomplished against the victim's will by threatening to
33 use the authority of a public official to incarcerate, arrest, or deport
34 the victim or another, and the victim has a reasonable belief that
35 the perpetrator is a public official, shall be punished by
36 imprisonment in the state prison for a period of three, six, or eight
37 years.

38 As used in this subdivision, "public official" means a person
39 employed by a governmental agency who has the authority, as part

1 of that position, to incarcerate, arrest, or deport another. The
2 perpetrator does not actually have to be a public official.

3 (l) As used in subdivisions (c) and (d), “threatening to retaliate”
4 means a threat to kidnap or falsely imprison, or to inflict extreme
5 pain, serious bodily injury, or death.

6 (m) In addition to any punishment imposed under this section,
7 the judge may assess a fine not to exceed seventy dollars (\$70)
8 against any person who violates this section, with the proceeds of
9 this fine to be used in accordance with Section 1463.23. The court
10 shall, however, take into consideration the defendant’s ability to
11 pay, and no defendant shall be denied probation because of his or
12 her inability to pay the fine permitted under this subdivision.

13 *SEC. 5. Section 289 of the Penal Code is amended to read:*

14 289. (a) (1) (A) Any person who commits an act of sexual
15 penetration when the act is accomplished against the victim’s will
16 by means of force, violence, duress, menace, or fear of immediate
17 and unlawful bodily injury on the victim or another person shall
18 be punished by imprisonment in the state prison for three, six, or
19 eight years.

20 (B) Any person who commits an act of sexual penetration upon
21 a child who is under 14 years of age, when the act is accomplished
22 against the victim’s will by means of force, violence, duress,
23 menace, or fear of immediate and unlawful bodily injury on the
24 victim or another person, shall be punished by imprisonment in
25 the state prison for 8, 10, or 12 years.

26 (C) Any person who commits an act of sexual penetration upon
27 a minor who is 14 years of age or older, when the act is
28 accomplished against the victim’s will by means of force, violence,
29 duress, menace, or fear of immediate and unlawful bodily injury
30 on the victim or another person, shall be punished by imprisonment
31 in the state prison for 6, 8, or 10 years.

32 (D) This paragraph does not preclude prosecution under Section
33 269, Section 288.7, or any other provision of law.

34 (2) Any person who commits an act of sexual penetration when
35 the act is accomplished against the victim’s will by threatening to
36 retaliate in the future against the victim or any other person, and
37 there is a reasonable possibility that the perpetrator will execute
38 the threat, shall be punished by imprisonment in the state prison
39 for three, six, or eight years.

1 (b) Except as provided in subdivision (c), any person who
2 commits an act of sexual penetration, and the victim is at the time
3 incapable, because of a mental disorder or developmental or
4 physical disability, of giving legal consent, and this is known or
5 reasonably should be known to the person committing the act or
6 causing the act to be committed, shall be punished by imprisonment
7 in the state prison for three, six, or eight years. Notwithstanding
8 the appointment of a conservator with respect to the victim pursuant
9 to the provisions of the Lanterman-Petris-Short Act (Part 1
10 (commencing with Section 5000) of Division 5 of the Welfare and
11 Institutions Code), the prosecuting attorney shall prove, as an
12 element of the crime, that a mental disorder or developmental or
13 physical disability rendered the alleged victim incapable of giving
14 legal consent.

15 (c) Any person who commits an act of sexual penetration, and
16 the victim is at the time incapable, because of a mental disorder
17 or developmental or physical disability, of giving legal consent,
18 and this is known or reasonably should be known to the person
19 committing the act or causing the act to be committed and both
20 the defendant and the victim are at the time confined in a state
21 hospital for the care and treatment of the mentally disordered or
22 in any other public or private facility for the care and treatment of
23 the mentally disordered approved by a county mental health
24 director, shall be punished by imprisonment in the state prison, or
25 in a county jail for a period of not more than one year.
26 Notwithstanding the existence of a conservatorship pursuant to
27 the provisions of the Lanterman-Petris-Short Act (Part 1
28 (commencing with Section 5000) of Division 5 of the Welfare and
29 Institutions Code), the prosecuting attorney shall prove, as an
30 element of the crime, that a mental disorder or developmental or
31 physical disability rendered the alleged victim incapable of giving
32 legal consent.

33 (d) Any person who commits an act of sexual penetration, and
34 the victim is at the time unconscious of the nature of the act and
35 this is known to the person committing the act or causing the act
36 to be committed, shall be punished by imprisonment in the state
37 prison for three, six, or eight years. As used in this subdivision,
38 “unconscious of the nature of the act” means incapable of resisting
39 because the victim meets one of the following conditions:

40 (1) Was unconscious or asleep.

1 (2) Was not aware, knowing, perceiving, or cognizant that the
2 act occurred.

3 (3) Was not aware, knowing, perceiving, or cognizant of the
4 essential characteristics of the act due to the perpetrator's fraud in
5 fact.

6 (4) Was not aware, knowing, perceiving, or cognizant of the
7 essential characteristics of the act due to the perpetrator's fraudulent
8 representation that the sexual penetration served a professional
9 purpose when it served no professional purpose.

10 (e) Any person who commits an act of sexual penetration when
11 the victim is prevented from resisting by any intoxicating or
12 anesthetic substance, or any controlled substance, and this condition
13 was known, or reasonably should have been known by the accused,
14 shall be punished by imprisonment in the state prison for a period
15 of three, six, or eight years.

16 (f) Any person who commits an act of sexual penetration when
17 the victim submits under the belief that the person committing the
18 act or causing the act to be committed is the victim's ~~spouse~~ *sexual*
19 *partner, as defined in Section 261.1*, and this belief is induced by
20 any artifice, pretense, or concealment practiced by the accused,
21 with intent to induce the belief, shall be punished by imprisonment
22 in the state prison for a period of three, six, or eight years.

23 (g) Any person who commits an act of sexual penetration when
24 the act is accomplished against the victim's will by threatening to
25 use the authority of a public official to incarcerate, arrest, or deport
26 the victim or another, and the victim has a reasonable belief that
27 the perpetrator is a public official, shall be punished by
28 imprisonment in the state prison for a period of three, six, or eight
29 years.

30 As used in this subdivision, "public official" means a person
31 employed by a governmental agency who has the authority, as part
32 of that position, to incarcerate, arrest, or deport another. The
33 perpetrator does not actually have to be a public official.

34 (h) Except as provided in Section 288, any person who
35 participates in an act of sexual penetration with another person
36 who is under 18 years of age shall be punished by imprisonment
37 in the state prison or in the county jail for a period of not more
38 than one year.

39 (i) Except as provided in Section 288, any person over the age
40 of 21 years who participates in an act of sexual penetration with

1 another person who is under 16 years of age shall be guilty of a
2 felony.

3 (j) Any person who participates in an act of sexual penetration
4 with another person who is under 14 years of age and who is more
5 than 10 years younger than he or she shall be punished by
6 imprisonment in the state prison for three, six, or eight years.

7 (k) As used in this section:

8 (1) “Sexual penetration” is the act of causing the penetration,
9 however slight, of the genital or anal opening of any person or
10 causing another person to so penetrate the defendant’s or another
11 person’s genital or anal opening for the purpose of sexual arousal,
12 gratification, or abuse by any foreign object, substance, instrument,
13 or device, or by any unknown object.

14 (2) “Foreign object, substance, instrument, or device” shall
15 include any part of the body, except a sexual organ.

16 (3) “Unknown object” shall include any foreign object,
17 substance, instrument, or device, or any part of the body, including
18 a penis, when it is not known whether penetration was by a penis
19 or by a foreign object, substance, instrument, or device, or by any
20 other part of the body.

21 (l) As used in subdivision (a), “threatening to retaliate” means
22 a threat to kidnap or falsely imprison, or inflict extreme pain,
23 serious bodily injury or death.

24 (m) As used in this section, “victim” includes any person who
25 the defendant causes to penetrate the genital or anal opening of
26 the defendant or another person or whose genital or anal opening
27 is caused to be penetrated by the defendant or another person and
28 who otherwise qualifies as a victim under the requirements of this
29 section.

30 ~~SEC. 2.~~

31 *SEC. 6.* No reimbursement is required by this act pursuant to
32 Section 6 of Article XIII B of the California Constitution because
33 the only costs that may be incurred by a local agency or school
34 district will be incurred because this act creates a new crime or
35 infraction, eliminates a crime or infraction, or changes the penalty
36 for a crime or infraction, within the meaning of Section 17556 of
37 the Government Code, or changes the definition of a crime within
38 the meaning of Section 6 of Article XIII B of the California
39 Constitution.

1 ~~SEC. 3.~~

2 *SEC. 7.* This act is an urgency statute necessary for the
3 immediate preservation of the public peace, health, or safety within
4 the meaning of Article IV of the Constitution and shall go into
5 immediate effect. The facts constituting the necessity are:

6 In order to protect the public safety by minimizing the threat
7 posed by sexual predators at the earliest possible time, it is
8 necessary that this act take effect immediately.

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